IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 860 OF 2003

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri I.M.Khairdi for the Appellants.

Shri S.S.Salunke for the Respondents Nos.1, 3 to 9.

CORAM : ABHAY S.OKA, J.

DATED : 18th August, 2004.

P.C.:

1. By order dated 9th August 2004, the parties were informed that the First Appeal will be decided finally at admission stage. Accordingly the First Appeal is taken up for final hearing.

2. The Challenge in the First Appeal is to the Judgment and Order dated 17th July 2002 passed by the learned Joint Charity Commissioner, Latur Region, Latur, in an Application under section 47 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the said Act of 1950"). The dispute is about the appointment of Trustees of a Public Trust Kurmadas Deosthan having its office at Laul, Taluka Madha, Dist. Solapur. By the impugned order a finding was recorded that the founder trustees were not alive and as the legal

representatives of the founder trustees have not approached to take charge of the Deosthan, a case was made out for appointment of Trustees. Accordingly the learned Joint Charity Commissioner appointed Respondent Nos.3 to 9 as Trustees of the said Trust. The Application under section 47 of the said Act of 1950 was made by the Respondent No.1 herein.

3. Shri Khairdi, the learned Advocate appearing for the Appellants, pointed out that Schedule I maintained as per Rule 5 of the Bombay Public Trust Rules, 1951 shows that the mode of succession to trusteeship in respect of Respondent No.2-Trust is hereditary. He pointed out that names of the hereditary trustees were mentioned in the Schedule I. The Appellant No.1 is the son of one Dhondiba and the Appellant No.2 is the son of Badshah, who were the Trustees as recorded in the Schedule I. He submitted that when the mode of succession to trusteeship was hereditary, notice of the application under section 47 of the said Act of 1950 ought to have been given to the Appellants and all other legal representatives of the original Trustees. He submitted that the daily Pooja is being performed in the Temple by the Appellants and the Respondents Nos.3 to 9 have not taken charge as Trustees.

4. The learned Advocate appearing for the Respondents Nos.3 to 9 submitted that it was for the legal representatives of the deceased Trustees to come forward and to apply for being appointed as Trustees. As they failed to do so, the order under section 47 of the said Act of 1950 is passed by the Authority. He submitted that the Trustees appointed under the said order have taken charge. He disputed that daily pooja is being performed in the temple by the Appellants.

5. I have considered the rival submissions. From the copy of the Schedule I annexed to the Memo of Appeal, I find that names of three persons have been mentioned as Trustees of the Respondent No.2-Trust and the mode of succession to trusteeship is shown as hereditary. The Appellants Nos.1 and 2 are the sons of the two Trustees mentioned in the Schedule I. Shri Khairdi learned Counsel appearing for the Appellants fairly states that there are other legal representatives of the deceased Trustees. Admittedly no effort has been made to serve the notice of the application under section 47 of the said Act of 1950 to the legal representatives of the erstwhile Trustees who are dead. All that is recorded in the order is that the Inspector from the office of the Assistant Charity Commissioner, Solapur, had invited

objections from the villagers by beating of drums and that he also made enquiries.

6. Schedule I discloses the mode of succession to the post of Trustees as hereditary and if the names of the legal representatives or heirs of the deceased Trustees were not available on record, the learned Joint Charity Commissioner could have directed the Assistant Charity Commissioner or the Inspector from his office to make enquiry and ascertain the names and addresses of the said legal representatives who were entitled to be considered for appointment to the post of Trustees. However, such a course was not followed. Considering the entry in Schedule I, the Appellants were entitled to a notice of the proceedings under section 47 of the said Act of 1950. As the said notice is not given, the impugned order will have to be quashed and set aside and the the application under section 47 will have to be remanded to the learned Joint Charity Commissioner.

7. The question which arises as to what should be the arrangement till disposal of the application under section 47. The order impugned has been passed on 17th July 2002. In Civil Application for stay filed by the Appellants, this Court has issued rule and no ad-interim relief was granted in view of the position that none of the legal

representatives of the deceased Trustees have been appointed as Trustees of the Trust. Till the proceedings before the learned Joint Charity Commissioner are decided, the Trust property has to be maintained and administered. All the legal representatives of the deceased Trustees are not before me. Considering the interests of the Trust, it is desirable that the Respondents Nos.3 to 9, who were appointed as Trustees under the impugned order should be allowed to act as Adhoc Trustees of the Trust by way of interim arrangement pending the disposal of the proceedings before the learned Joint Charity Commissioner. Till the proceedings under section 47 of the said Act of 1950 are finally decided, the said Respondents Nos.3 to 9 will not take any major policy decision and will look after the day to day management of the said Trust. During the pendency of the proceedings, the Appellants and the other legal representatives of the original Trustees will be entitled to perform daily Pooja in the Temple.

8. Hence the following order:

(i) The Appeal is partly allowed. The impugned Judgment and Order is set aside.

(ii) The Application No.5 of 2001 filed by the Respondent No.1 is remanded to the Joint

Charity Commissioner, Latur Division, Latur for deciding the same afresh.

(iii) The parties to this Appeal will remain present before the Joint Charity Commissioner on 20th September 2004 at 11.00 a.m. for fixing the schedule of hearing.

(iv) The learned Joint Charity Commissioner will call for the report from the Assistant Charity Commissioner, Solapur, for ascertaining the names of all the legal heirs of the deceased Trustees and will issue notice to the said legal heirs and representatives of the deceased Trustees. The Appellants are also directed to submit names and addresses of the legal heirs and representatives of the deceased Trustees which are within their knowledge on or before 20th September 2004.

(v) The learned Joint Charity Commissioner will decide the application after giving opportunity of being heard to all concerned parties. The Application shall be decided expeditiously as possible and preferably on or before 30th April 2005.

(vi) Till disposal of the Application, the

Respondents Nos.3 to 9 will continue to act as adhoc Trustees of the Respondent No.2-Trust. The Respondents Nos.3 to 9 will not take any major policy decisions till disposal of the proceedings before the Joint Charity Commissioner without prior permission of the learned Joint Charity Commissioner. Till disposal of the Application, the Respondents Nos.3 to 9 will not prevent the Appellants and other legal representatives of the deceased Trustees from performing daily Pooja at the Temple.

(vii) All contentions on merit are kept open.

(viii) The direction given by this order in favour of Respondents Nos.3 to 9 to act as adhoc Trustees is naturally subject to the final order which may be passed in the said proceedings by the learned Joint Charity Commissioner.

(ix) Parties to act on authenticated copy of this order.

Judge.